

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**D'MARCELL RAHE,**

**Petitioner,**

**v.**

**Case No. 2:09-CV-0098**

**JUDGE GREGORY L. FROST**

**Magistrate Judge E.A. Preston Deavers**

**WANZA JACKSON, WARDEN,  
WARREN CORRECTIONAL INSTITUTION,**

**Respondent.**

**OPINION AND ORDER**

On July 29, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus be dismissed. (Doc. # 17.) Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. (Doc. # 21.) Petitioner objects to all of the Magistrate Judge's recommendations and conclusions. He again asserts, as cause for his procedural default of claims two through five, the ineffective assistance of counsel as well as his *pro se* incarcerated status, low literacy, and the loss of legal materials during a prison transfer.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's arguments are not persuasive. Ineffective assistance of counsel cannot constitute cause for Petitioner's procedural defaults because the state appellate court rejected his Rule 26(B) application as untimely. *Edwards v. Carpenter*, 529 U.S. 446, 451-52 (2000) (noting that a claim of ineffective assistance generally must be presented to the state courts as an independent claim before it may be used to establish cause for a procedural default). Moreover, nothing in the record supports Petitioner's allegation that he was prevented by any objective factor not attributable to him from

complying with state procedural rules. *See Hartman v. Bagley*, 492 F.3d 347, 358 (6th Cir. 2007); *Lundgren v. Mitchell*, 440 F.3d 754, 763-64 (6th Cir. 2006); *Maples v. Stegall*, 340 F.3d 433, 438 (6th Cir. 2003).

Therefore, the Court **OVERRULES** Petitioner's objections (Doc. # 21), **ADOPTS** and **AFFIRMS** the Magistrate Judge's *Report and Recommendation* (Doc. # 17), and **DISMISSES** this action. The Clerk shall enter judgment accordingly and terminate this action on the docket records of the United States District Court for the Southern District of Ohio, Eastern Division.

**IT IS SO ORDERED.**

/s/ Gregory L. Frost  
GREGORY L. FROST  
UNITED STATES DISTRICT JUDGE